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**HOUSE BILL 480**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Rhonda S. King**

**AN ACT**

**RELATING TO CORRECTIONS; CREATING THE CORRECTIONS DEPARTMENT  
COMMUNITY SUPERVISION FUND; ALLOWING PROBATION AND PAROLE  
SERVICES FEES TO FUND THE ADMINISTRATION AND OPERATION OF  
PROBATION AND PAROLE SUPERVISION PROGRAMS.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. A new section of the Corrections Act is  
enacted to read:**

**"[NEW MATERIAL] CORRECTIONS DEPARTMENT COMMUNITY  
SUPERVISION FUND CREATED. --**

**A. The "corrections department community  
supervision fund" is created in the state treasury. Money  
received by the department pursuant to Sections 31-20-6 and  
31-21-10 NMSA 1978 shall be deposited in the fund. Money in  
the fund shall not revert to the general fund at the end of any**

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1 fiscal year. Expenditures from the fund shall be by warrant of  
2 the secretary of finance and administration upon vouchers  
3 signed by the secretary of corrections or the secretary's  
4 authorized representative.

5 B. The fund shall be administered by the  
6 department, and money in the fund is subject to appropriation  
7 by the legislature for the operation and administration of  
8 intensive supervision programs, community corrections programs,  
9 probation supervision programs and parole supervision programs.  
10 The department may use the fund to hire additional permanent or  
11 term full-time-equivalent positions, contract for services and  
12 procure equipment and materials for the operation and  
13 administration of intensive supervision programs, community  
14 corrections programs, probation supervision programs and parole  
15 supervision programs. "

16 Section 2. Section 31-20-6 NMSA 1978 (being Laws 1963,  
17 Chapter 303, Section 29-18, as amended) is amended to read:

18 "31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING  
19 SENTENCE. --The magistrate, metropolitan or district court shall  
20 attach to its order deferring or suspending sentence such  
21 reasonable conditions as it [~~may deem~~] deems necessary to  
22 ensure that the defendant will observe the laws of the United  
23 States and the various states and the ordinances of any  
24 municipality. The defendant upon conviction shall be required  
25 to reimburse a law enforcement agency or local crime stopper

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1 program for the amount of any reward paid by the agency or  
2 program for information leading to ~~his~~ the defendant's  
3 arrest, prosecution or conviction, but in no event shall  
4 reimbursement to the crime stopper program preempt restitution  
5 to victims pursuant to the provisions of Section 31-17-1 NMSA  
6 1978. The defendant upon conviction shall be required to pay  
7 the actual costs of ~~his~~ the defendant's supervised probation  
8 service to the adult probation and parole division of the  
9 corrections department or appropriate responsible agency for  
10 deposit to the corrections department ~~intensive~~ community  
11 supervision fund not exceeding one thousand eight hundred  
12 dollars (\$1,800) annually to be paid in monthly installments of  
13 not less than twenty-five dollars (\$25.00) and not more than  
14 one hundred fifty dollars (\$150), as set by the appropriate  
15 district supervisor of the adult probation and parole division,  
16 based upon the financial circumstances of the defendant. The  
17 defendant's payment of the supervised probation costs shall not  
18 be waived unless the court holds an evidentiary hearing and  
19 finds that the defendant is unable to pay the costs. If the  
20 court waives the defendant's payment of the supervised  
21 probation costs and the defendant's financial circumstances  
22 subsequently change so that the defendant is able to pay the  
23 costs, the appropriate district supervisor of the adult  
24 probation and parole division shall advise the court and the  
25 court shall hold an evidentiary hearing to determine whether

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1 the waiver should be rescinded. The court may also require the  
2 defendant to:

3 A. provide for the support of persons for whose  
4 support ~~[he]~~ the defendant is legally responsible;

5 B. undergo available medical or psychiatric  
6 treatment and enter and remain in a specified institution when  
7 required for that purpose;

8 C. be placed on probation under the supervision,  
9 guidance or direction of the adult probation and parole  
10 division for a term not to exceed five years;

11 D. serve a period of time in volunteer labor to be  
12 known as "community service". The type of labor and period of  
13 service shall be at the sole discretion of the court; provided  
14 that a person receiving community service shall be immune from  
15 any civil liability other than gross negligence arising out of  
16 the community service, and a person who performs community  
17 service pursuant to court order or a criminal diversion program  
18 shall not be entitled to wages, shall not be considered an  
19 employee and shall not be entitled to workers' compensation,  
20 unemployment benefits or any other benefits otherwise provided  
21 by law. As used in this subsection, "community service" means  
22 labor that benefits the public at large or a public, charitable  
23 or educational entity or institution;

24 E. make a contribution of not less than ten dollars  
25 (\$10.00) and not more than one hundred dollars (\$100), to be

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1 paid in monthly installments of not less than five dollars  
2 (\$5.00), to a local crime stopper program or a local drug abuse  
3 resistance education program that operates in the territorial  
4 jurisdiction of the court; and

5 F. satisfy any other conditions reasonably related  
6 to ~~[his]~~ the defendant's rehabilitation. "

7 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,  
8 Chapter 28, Section 1, as amended) is amended to read:

9 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

10 A. An inmate of an institution who was sentenced to  
11 life imprisonment as the result of the commission of a capital  
12 felony, who was convicted of three violent felonies and  
13 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978  
14 or who was convicted of two violent sexual offenses and  
15 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
16 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a  
17 parole hearing after ~~[he]~~ the inmate has served thirty years of  
18 ~~[his]~~ the inmate's sentence. Before ordering the parole of an  
19 inmate sentenced to life imprisonment, the board shall:

20 (1) interview the inmate at the institution  
21 where ~~[he]~~ the inmate is committed;

22 (2) consider all pertinent information  
23 concerning the inmate, including:

- 24 (a) the circumstances of the offense;  
25 (b) mitigating and aggravating

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1 circumstances;

2 (c) whether a deadly weapon was used in  
3 the commission of the offense;

4 (d) whether the inmate is a habitual  
5 offender;

6 (e) the reports filed under Section  
7 31-21-9 NMSA 1978; and

8 (f) the reports of such physical and  
9 mental examinations as have been made while in an institution;

10 (3) make a finding that a parole is in the  
11 best interest of society and the inmate; and

12 (4) make a finding that the inmate is able and  
13 willing to fulfill the obligations of a law-abiding citizen.

14 B. If parole is denied, the inmate sentenced to  
15 life imprisonment shall again become entitled to a parole  
16 hearing at two-year intervals. The board may, on its own  
17 motion, reopen any case in which a hearing has already been  
18 granted and parole denied.

19 ~~[B.]~~ C. Unless the board finds that it is in the  
20 best interest of society and the parolee to reduce the period  
21 of parole, ~~[a person]~~ an inmate who was convicted of a capital  
22 felony shall be required to undergo a minimum period of parole  
23 of five years. During the period of parole, the ~~[person]~~  
24 inmate shall be under the guidance and supervision of the  
25 board.

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1           ~~[C.]~~ D. Except for sex offenders as provided in  
2 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a  
3 first, second or third degree felony and who has served the  
4 sentence of imprisonment imposed by the court in an institution  
5 designated by the corrections department shall be required to  
6 undergo a two-year period of parole. An inmate who was  
7 convicted of a fourth degree felony and who has served the  
8 sentence of imprisonment imposed by the court in an institution  
9 designated by the corrections department shall be required to  
10 undergo a one-year period of parole. During the period of  
11 parole, the ~~[person]~~ inmate shall be under the guidance and  
12 supervision of the board.

13           ~~[D.]~~ E. Every ~~[person]~~ inmate while on parole shall  
14 remain in the legal custody of the institution from which ~~[he]~~  
15 the inmate was released, but shall be subject to the orders of  
16 the board. The board shall furnish to each inmate as a  
17 prerequisite to ~~[his]~~ the inmate's release under its  
18 supervision a written statement of the conditions of parole  
19 that shall be accepted and agreed to by the inmate as evidenced  
20 by ~~[his]~~ the inmate's signature affixed to a duplicate copy to  
21 be retained in the files of the board. The board shall also  
22 require as a prerequisite to release the submission and  
23 approval of a parole plan. If an inmate refuses to affix ~~[his]~~  
24 the inmate's signature to the written statement of the  
25 conditions of ~~[his]~~ the inmate's parole or does not have an

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1 approved parole plan, [~~he~~] the inmate shall not be released and  
2 shall remain in the custody of the institution in which [~~he has~~  
3 ~~served his sentence~~] the inmate's sentence has been served,  
4 excepting parole, until such time as the period of parole [~~he~~]  
5 the inmate was required to serve, less meritorious deductions,  
6 if any, expires, at which time [~~he~~] the inmate shall be  
7 released from that institution without parole, or until such  
8 time that [~~he~~] the inmate evidences [~~his~~] acceptance and  
9 agreement to the conditions of parole as required or the inmate  
10 receives approval for [~~his~~] a parole plan or both. Time served  
11 from the date that an inmate refuses to accept and agree to the  
12 conditions of parole or the inmate fails to receive approval  
13 for [~~his~~] a parole plan shall reduce the period, if any, to be  
14 served under parole at a later date. If the district court has  
15 ordered that the inmate make restitution to a victim as  
16 provided in Section 31-17-1 NMSA 1978, the board shall include  
17 restitution as a condition of parole. The board shall also  
18 personally apprise the inmate of the conditions of parole and  
19 [~~his~~] the inmate's duties relating thereto.

20 [~~E.~~] F. When [~~a person~~] an inmate on parole has  
21 performed the obligations of [~~his~~] the inmate's release for the  
22 period of parole provided in this section, the board shall make  
23 a final order of discharge and issue [~~him~~] the inmate a  
24 certificate of discharge.

25 [~~F.~~] G. Pursuant to the provisions of Section

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1 31-18-15 NMSA 1978, the board shall require the inmate as a  
2 condition of parole:

3 (1) to pay the actual costs of ~~[his]~~ the  
4 inmate's parole services to the adult probation and parole  
5 division of the corrections department for deposit to the  
6 corrections department ~~[intensive]~~ community supervision fund  
7 not exceeding one thousand eight hundred dollars (\$1,800)  
8 annually to be paid in monthly installments of not less than  
9 twenty-five dollars (\$25.00) and not more than one hundred  
10 fifty dollars (\$150), as set by the appropriate district  
11 supervisor of the adult probation and parole division, based  
12 upon the financial circumstances of the ~~[defendant]~~ inmate.  
13 The ~~[defendant's]~~ inmate's payment of the supervised parole  
14 costs shall not be waived unless the board holds an evidentiary  
15 hearing and finds that the ~~[defendant]~~ inmate is unable to pay  
16 the costs. If the board waives the ~~[defendant's]~~ inmate's  
17 payment of the supervised parole costs and the ~~[defendant's]~~  
18 inmate's financial circumstances subsequently change so that  
19 the ~~[defendant]~~ inmate is able to pay the costs, the  
20 appropriate district supervisor of the adult probation and  
21 parole division shall advise the board and the board shall hold  
22 an evidentiary hearing to determine whether the waiver should  
23 be rescinded; and

24 (2) to reimburse a law enforcement agency or  
25 local crime stopper program for the amount of any reward paid

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1 by the agency or program for information leading to [~~his~~] the  
2 inmate's arrest, prosecution or conviction.

3 [~~G.~~] H. The provisions of this section shall apply  
4 to all inmates except geriatric, permanently incapacitated and  
5 terminally ill inmates eligible for the medical and geriatric  
6 parole program as provided by the Parole Board Act. "

7 Section 4. Section 31-21-13.1 NMSA 1978 (being Laws  
8 1988, Chapter 62, Section 3, as amended) is amended to read:

9 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS. --

10 A. As used in this section, "intensive  
11 supervision programs" means programs that provide highly  
12 structured and intense supervision, with stringent reporting  
13 requirements, of certain [~~individuals~~] persons who represent  
14 an excessively high assessment of risk of violation of  
15 probation or parole; ~~emphasize meaningful rehabilitative~~  
16 activities and reasonable alternatives without seriously  
17 increasing the risk of recidivist crime; and facilitate the  
18 payment of restitution by the offender to the victim.

19 "Intensive supervision programs" [~~include~~] includes house  
20 arrest programs or electronic surveillance programs or both.

21 B. The corrections department shall implement and  
22 operate intensive supervision programs in various local  
23 communities. The programs shall provide services for  
24 appropriate [~~individuals~~] persons by probation and parole  
25 officers of the corrections department. The corrections

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1 department shall promulgate rules [~~and regulations~~] to  
2 provide that the officers providing these services have a  
3 maximum case load of twenty offenders and to provide for  
4 offender selection and other criteria. The corrections  
5 department may cooperate with all recognized law enforcement  
6 authorities and share all necessary and pertinent  
7 information, records or documents regarding probationers or  
8 parolees in order to implement and operate these intensive  
9 supervision programs.

10 C. For purposes of this section, a judge  
11 contemplating imposition of an intensive supervision program  
12 for [~~an individual~~] a person shall consult with the adult  
13 probation and parole division of the corrections department  
14 and consider the recommendations before imposing such  
15 probation. The [~~adult probation and parole~~] division [~~of the~~  
16 ~~corrections department~~] shall recommend only those  
17 [~~individuals~~] persons who would have otherwise been  
18 recommended for incarceration for intensive supervision  
19 programs. A judge has discretion to impose an intensive  
20 supervision program for [~~an individual~~] a person, regardless  
21 of recommendations made by the [~~adult probation and parole~~]  
22 division.

23 D. Inmates eligible for parole, or within twelve  
24 months of eligibility for parole or inmates who would  
25 otherwise remain in a correctional institution for lack of a

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1 parole plan or those parolees whose parole the board would  
2 otherwise revoke are eligible for intensive supervision  
3 programs. The provisions of this section do not limit or  
4 reduce the statutory authority vested in probation and parole  
5 supervision as defined by any other section of the Probation  
6 and Parole Act.

7 ~~[D. There is created in the state treasury the~~  
8 ~~"corrections department intensive supervision fund" to be~~  
9 ~~administered by the corrections department upon vouchers~~  
10 ~~signed by the secretary of corrections. Balances in the~~  
11 ~~corrections department intensive supervision fund shall not~~  
12 ~~revert to the general fund. Beginning July 1, 1988, the~~  
13 ~~intensive supervision programs established pursuant to this~~  
14 ~~section shall be funded by those supervision costs collected~~  
15 ~~pursuant to the provisions of Sections 31-20-6 and 31-21-10~~  
16 ~~NMSA 1978. The corrections department is specifically~~  
17 ~~authorized to hire additional permanent or term full-time~~  
18 ~~equivalent positions for the purpose of implementing the~~  
19 ~~provisions of this section.]"~~

20 Section 5. EFFECTIVE DATE. -- The effective date of the  
21 provisions of this act is July 1, 2005.

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